

\*\*E-Filed 6/28/2011\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURG, PA, a Pennsylvania  
Corporation,

Plaintiff,

v.

RESOURCES DEVELOPMENT SERVICES,  
INC., et al.,

Defendants.

Case Number 5:10-cv-01324-JF/PVT

ORDER<sup>1</sup> GRANTING MOTION FOR  
APPROVAL OF GOOD FAITH  
SETTLEMENT

[re: docket nos. 176, 177]

Plaintiff National Union moves for a determination of good faith settlement as to Defendant Martha Renteria. The motion is opposed by Defendant Premier Recycle, joined by Valley Recycling, on the ground that the claimed settlement payment of \$20,000 is not in the ballpark of a fair settlement with a defendant alleged to be part of a \$13 million conspiracy to defraud. However, in light of the relatively minor role Renteria is alleged to have had in the conspiracy, the absence of evidence of collusion, and the fact that Renteria has limited insurance from which continued defense costs are deducted, the Court concludes that the settlement is in

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<sup>1</sup> This disposition is not designated for publication in the official reports.

1 good faith.

2 National Union brings this insurance subrogation action to recover funds paid to Waste  
3 Management Corporation as a result of an alleged fraudulent scheme. It asserts that several  
4 trucking companies, acting through their broker, Resource Development Services, Inc. (RDS),  
5 made illegal payments to Waste Management employees to allow their trucks to dump waste at a  
6 Waste Management landfill without proper processing. National Union alleges that Renteria  
7 served as an accountant and bookkeeper for RDS; that she was aware of the scheme to defraud  
8 Waste Management; and that at the direction of RDS's owner James Lucero, she issued checks  
9 to Waste Management employees as bribes. For her part, Renteria claims that she worked only  
10 as a bookkeeper for RDS and first learned of any fraudulent activity when the police raided her  
11 office on June 5, 2008.

12 Renteria has submitted a declaration stating that she has a \$100,000 professional liability  
13 policy and no other considerable assets with which to pay a settlement, judgment or any  
14 expenses.<sup>2</sup> Declaration of Martha Renteria Decl. ¶¶ 2-3. Renteria's counsel also has submitted a  
15 declaration stating that the policy is written on an "expense within limits" basis, meaning that  
16 amounts paid in litigation fees and expenses erode the applicable policy limits of the claim.  
17 Declaration of Mark C. Russell ¶¶ 3-4. Counsel states that Renteria already has incurred  
18 approximately \$20,000 in legal fees and costs in connection with defending this action. *Id.*

19 California law provides that "[a]ny party in an action in which it is alleged that two or  
20 more parties are joint tortfeasors . . . shall be entitled to a hearing on the issue of the good faith  
21 of a settlement entered into by the plaintiff or other claimant and one or more alleged  
22 tortfeasors." Cal. Code Civ. Pro. § 877.6(a)(1). "The issue of good faith of a settlement may be  
23 determined by the court on the basis of affidavits . . . or the court may, in its discretion, receive  
24 other evidence at the hearing." *Id.* § 877.6(b). "The party asserting the lack of good faith shall  
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26 <sup>2</sup> Premier filed objections to National Union's motion, contending that the statements  
27 with respect to Renteria's insurance policy are hearsay. The Court provided Renteria and her  
28 counsel an opportunity to supplement the record with declarations attesting to the status of her  
insurance policy and financial circumstances.

1 have the burden of proof on that issue. *Id.* § 877.6(d).

2 The California Supreme Court has articulated a number of factors to be taken into  
 3 account in determining the good faith of a settlement, including: (1) a rough approximation of  
 4 the plaintiff's total recovery; (2) a rough approximation of the settlor's proportionate liability;  
 5 (3) the amount paid in settlement; (4) the allocation of the settlement proceeds among plaintiffs;  
 6 (5) a recognition that a settlor should pay less in settlement than if found liable after trial; (6) the  
 7 settlor's financial condition and insurance policy limits, if any; and (7) evidence of any  
 8 collusion, fraud, or tortious conduct between the settlor and the plaintiffs aimed at making the  
 9 nonsettling parties pay more than their fair share. *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.*,  
 10 38 Cal. 3d 488, 499 (1985). "The party asserting the lack of good faith, who has the burden of  
 11 proof on that issue, should be permitted to demonstrate, if he can, that the settlement is so far  
 12 'out of the ballpark' in relation to these factors as to be inconsistent with the equitable  
 13 objectives of the statute." *Id.*

14 Premier Recycle contends that allowing Renteria, who is alleged to be an integral part of  
 15 the conspiracy, to settle for \$20,000 is outside the ballpark of a good faith settlement. It argues  
 16 that as an accountant and bookkeeper for RDS, Renteria was in a position to know about and  
 17 facilitate the illicit payments to Waste Management employees. Premier also contends that the  
 18 motion is premature because the other Defendants have not had an opportunity to conduct  
 19 discovery with respect to Renteria's financial circumstances, including how much she received  
 20 from the alleged conspiracy.

21 Although \$20,000 is a small fraction of the \$13 million National Union seeks in this  
 22 action, the Court concludes that Premier has not met its burden of demonstrating that in light of  
 23 all of the *Tech-Bilt* factors the settlement is not in good faith. In particular, all parties  
 24 acknowledge that this case remains in its initial stages. What damages National Union may be  
 25 able to claim when the case is concluded—if any—remain a matter of speculation. In addition, the  
 26 Court must consider Renteria's financial condition and lack of sufficient insurance coverage.  
 27 The likelihood that Renteria's relatively modest insurance policy would be exhausted by legal  
 28 fees if she continues to litigate suggests strongly that her co-defendants would be unlikely to

1 recover much more from her in any subsequent contribution action. The incentives provided by  
2 Renteria's insurance policy also illustrate why the parties would seek the present settlement  
3 without collusion.

4 The California Supreme Court has warned against making a motion for determination of  
5 good faith settlement into a mini-trial on the merits. While facts relating to the respective  
6 liability of the parties are uncertain at this stage of litigation, there is no evidence or suggestion  
7 that Renteria is one of the primary perpetrators or beneficiaries of the alleged fraudulent scheme.

8 As National Union observes correctly, there is not an absolute right to conduct discovery  
9 in connection with a good faith settlement determination. *See Franklin Mint Co. v. Superior*  
10 *Court*, 130 Cal. App. 4th 1550, 1561 fn. 5 (2005). In this case, further discovery with respect to  
11 Renteria only would serve to increase the cost of her defense, undermining the incentive for the  
12 parties to settle and increasing litigation costs to the extent that other Defendants would be  
13 unlikely to recoup anything from Renteria in a contribution action even if she were to remain  
14 in the case.

15 **ORDER**

16 For the reasons articulated above, and good cause appearing, the Court determines that  
17 the settlement reached between National Union and Martha Renteria is in good faith.

18 IT IS SO ORDERED.

19 DATED: June 27, 2011

20   
21 JEREMY FOGEL  
22 United States District Judge  
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